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**13. Production of title deed of witness, not a party.** No witness who is not a party to a suit shall be compelled to produce his title deeds to any property or any document in virtue of which he holds any property as pledgee or mortgagee or any document the production of which might tend to criminate him, unless he has agreed in writing to produce them with the person seeking the production of such deeds or some person through whom he claims.

#### NOTES

**Fact admitted**—Facts which are admitted need not be formally proved. [2000 CLC 90]

**14. Production of documents which another person, having possession could refuse to produce.** No one shall be compelled to produce documents in his possession which any other person would be entitled to refuse to produce if they were in his possession, unless such last mentioned person consents to their production.

**15. Witness not excused from answering on ground that answer will criminate.** A witness shall not be excused from answering any question as to any matter relevant to the matter in issue in any suit or in any civil or criminal proceedings, upon the ground that the answer to such question will criminate, or may tend directly or indirectly to criminate, such witness, or that it will expose, or tend directly or indirectly to expose, such witness to a penalty or forfeiture of any kind.

Provided that no such answer, which a witness shall be compelled to give, shall subject him to any arrest or prosecution, or be proved against him in any criminal proceeding, except a prosecution for giving false evidence by such answer.

#### NOTES

Evidence of an interested witness can be disbelieved. [1990 ALD 226] Section relates only to witnesses and applies to examination in Court or on Commission. [PLD 1997 Kar 41]

**16. Accomplice.** An accomplice shall be competent witness against an accused person, except in the case of an offence punishable with Hadd and a conviction is not illegal merely because it proceeds upon the uncorroborated testimony of an accomplice.

#### NOTES

**Accomplice's evidence.** Evidence of an approver or accomplice cannot be accepted for convicting a co-accused unless the same is corroborated by other co-gent and reliable evidence in material particulars. [PLD 2009 Lah. 559] Accomplice's evidence—Inadmissible in Hadd & Qisas cases [1992 P.Cr.L.J. 171] Evidence of accomplice is to be scrutinized if his evidence is inherently worth reliance and he is also corroborated through independent evidence. [PLD 2002 Kar 152] Not necessary that each piece of evidence of other witnesses shall independently establish a particular fact and only then evidence of such witness may be accepted as corroborative piece of evidence for the words of "accomplice". When admissible, can be made the basis of conviction. [PLD 2002 Kar 152] Evidence of accomplice is not to be out rightly rejected but relied upon if corroborated. [2008 YLR 952] Three elements are required to be proved for conviction of hijacking, namely that the accused must have acted unlawfully, used or showed force or threats of any kind and thereby seized or exercised control of the aircraft. (For details please see case titled Muhammad Nawaz Sharif v. State). [PLD 2009 S.C. 814]

**17. Competence and number of witness.**— (1) The competence of a person to testify, and the number of witnesses required in any case shall be determined in accordance with the injunctions of Islam as laid down in the Holy Quran and Sunnah.

(2) Unless otherwise provided in any law relating to the enforcement of Huddood or any other special law,



- (a) in matters pertaining to financial or future obligations, if reduced to writing, the instrument shall be attested by two men, or one man and two women, so that one may remind the other, if necessary and evidence shall be led accordingly; and
- (b) in all other matters, the Court may accept, or act on, the testimony of one man or one woman or such other evidence as the circumstances of the case may warrant.

### NOTES

1. **Scope.** Article 17 clearly stipulates that except in Hudood Cases and financial matters a case can be proved through the evidence of a single witness. [2012 P.Cr.L.J. 1662] The rule of evidence incorporated in Art. 17 is that in the cases which fall within the ambit of Sub-Article (2) of Art. 17 the Court may accept or act on the testimony of the number of witnesses mentioned therein or such other evidence as the circumstances of the case may warrant. In the light of this rule in addition to or in absence of direct evidence, the Court may also consider the direct and circumstantial evidence brought on record in proof of fact. [2005 SCMR 564] In order to bring a case within the purview of Article 17 of Qanun-e-Shahadat the ingredients must co-exist firstly there must be an instrument, secondly, it would pertain or relate to a matter either of a financial or future obligations. If such two conditions are met, it is mandated that the instrument must be attested in terms of this Article. Agreement of sale or to sell immovable property being a written document is an instrument within the meaning of law. [PLD 2011 SC 241] For the purposes of proof of such a document attesting witnesses have to be compulsorily examined as per requirement of Article 79 Qanun-e-Shahadat otherwise it is not to be considered and taken as proved and used in evidence. [PLD 2011 SC 241]

2. **Proof of document**—For proving the execution of any document, it is essential that two attesting witnesses should appear before the Court and state that document was executed by the executant in their presence; and that they identified his signatures. [PLD 2009 S.C. (AJ&K) 13] To prove the execution of the document it is necessary to lead evidence to testify the fact that the executant put her thumb-impression out of her free will and consent in presence of witnesses. [1999 CLC 1130] Marginal witnesses of a document are produced not merely to identify the signatures of an executant but are examined to prove, in addition to the above fact, that the executant had put his signature within their view. [2005 SCMR 135] If a witness deposes that he had not seen the executant signing the disputed document, his statement is of no avail. [1985 SCMR 214] Where the execution of document is in issue, it is essential and mandatory upon the person relying upon the document to examine two of the attesting witnesses. [PLD 2005 Lah. 654] Article 17 read with Art. 79 make it clear that a document creating financial liability must be attested by two witnesses and proved likewise. [PLD 1995 Lah 395] Document not duly proved cannot be read in evidence. [1998 MLD 1592] Where both the attesting witnesses of document in question are alive and available but not produced, execution of document is not proved. [PLD 1996 S.C. 256] Only one witness examined, document would not be deemed to have been proved. [PLD 1996 Lah 367] Requirement of production of two attesting witnesses is sine quo non to prove the document. [PLD 2008 Lah. 51] Name of the scribe not mentioned on the deed. First marginal witness produced deposing that such deed was not prepared in his presence and he never appeared before any authority for its execution. Second marginal witness not produced. Execution of document held not proved. [PLD 2008 Lah. 511] Execution of document denied, party relying must prove the document—scribe as good a witness as anybody else. [2008 SCMR 1639]

3. **Registered document.** Sale deed registered and purchaser in possession of the disputed land on the basis thereof, non-examination of its attesting witnesses would not be fatal. [2002 SCMR 1391]

- (i) **Gift.** Delivery of possession is an essential ingredient to constitute a valid gift. Gift without possession is ab initio void. [2003 SCMR 41] Case law fortifying, [PLD 1964 S.C. 143; AIR 1945 PC 54; PLD 1956 S.C. (Pak) 309; 2002 SCMR 1291]
- (ii) **Proof.** Factum of gift should be proved by adducing cogent and convincing evidence. [2003 SCMR 41]
- (iii) **Power of attorney.** Document conferring authority on the agent to deal with financial matters and making him responsible for future obligations squarely fall within the category of instruments